

**701—226.18 (423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.**

**226.18(1)** The sales or rentals of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants are exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term “plants” does not include trees, shrubs, other woody perennials, or fungi.

**226.18(2)** Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

*a. Machinery.* The term “machinery” means major mechanical machines, or major components thereof, which contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

*b. Equipment.* The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property which performs a specialized function which, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

*c. Plants.* The term “plants” means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

*d. Property used in the flowering, ornamental, or vegetable plant production process which is neither equipment nor machinery.*

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep’t of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply which is not machinery or equipment. See subrule 226.19(4) for examples of supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

*e. Hand tools.* The term “hand tools” means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

*f. “Directly used” in the flowering, ornamental, or vegetable plant production process.* To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant

production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. See paragraph “h” of this subrule for an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery’s or equipment’s use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

*g. “Primarily used” in flowering, ornamental, or vegetable plant production.* Machinery or equipment is “primarily used” in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

*h. Beginning and end of flowering, ornamental, or vegetable plant production.* Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

*i. Machinery and equipment design.* Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment which are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence, but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer’s use would be considered exempt.

*j. Replacement parts.* The term “replacement parts” means the same as defined in subrule 226.1(2), paragraph “i.”

**226.18(3)** Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 226.19(3).

**226.18(4)** Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in flowering, ornamental, or vegetable plant production.

- a.* Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.
- b.* Machinery or equipment used in the growing operation's management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).
- c.* Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.
- d.* Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.
- e.* Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.
- f.* Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.
- g.* Vehicles subject to registration.

**226.18(5)** Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

**226.18(6)** Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of plants, wagons containing sterilized soil, and tractors used to pull these items.

**226.18(7)** Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—226.19(423) includes nonexclusive examples of machinery and equipment which are not self-propelled or attached to self-propelled machinery and equipment and which are directly and primarily used in plant production.

**226.18(8)** Fuel used in plant production. See subrule 226.12(2), paragraph "b."

**226.18(9)** Sales of water used in the production of plants are exempt from tax. If water is not separately metered, the plants' grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

**226.18(10)** Agricultural health promotion items. Sales to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants are exempt from tax. For the purposes of this rule, a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an insecticide or pesticide. Refer to rule 701—226.9(423) for more information regarding these exemptions.

**226.18(11)** Miscellaneous exempt and taxable plant sales.

- a.* Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.
- b.* Sales of portable buildings which will be used to display plants for retail sales are taxable.
- c.* Sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those greenhouses are taxable sales of a supply rather than exempt sales of equipment.

**226.18(12)** Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by

the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

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